

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:17-cv-00229-MR-DLH**

**MICHAEL ALAN PARKER,**

**Plaintiff,**

**vs.**

**CHARLES T. MARSTON, JR., M.D.,  
WILLIS A. ARCHER, M.D., and  
WALTER CLYDE HARPER, in his  
individual capacity,**

**Defendants.**

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**ORDER**

**THIS MATTER** is before the Court on the Plaintiff's Motion to Compel Defendants Marston and Archer [Doc. 42] and the Plaintiff's Motion to Compel Production of Medical Records by Rutherford Pediatrics [Doc. 44].

The Plaintiff filed the present motions on October 1, 2018. In his first motion, the Plaintiff moves the Court to compel the Defendants to respond to the Plaintiff's discovery requests about their current net worth within ten days after the entry of an Order denying the Defendants' Motion for Summary Judgment. [Doc. 42]. In his second motion, the Plaintiff moves to compel non-party Rutherford Pediatrics to produce the medical records of the

Plaintiff's children in compliance with subpoenas issued by the Plaintiff on August 1, 2018. [Doc. 44].

The discovery period in this case closed on September 1, 2018. [Doc. 21 at 1]. The Case Management Plan specifically provides that “[m]otions to compel must be filed within the discovery period or they may be deemed waived.” [Id. at 6]. Because the Plaintiff failed to file his Motions to Compel within the discovery period, his motions are subject to dismissal.

In his Motion to Compel Defendants Marston and Archer, the Plaintiff acknowledges the untimeliness of the motion but urges the Court to consider it nonetheless on the grounds that he had “good cause” for the late filing under Rule 16(b)(4) of the Federal Rules of Civil Procedure.<sup>1</sup> Specifically, the Plaintiff argues that, because he is seeking the disclosure of information only in the event that the Defendants’ Motion for Summary Judgment is denied, his present motion “is not a typical motion to compel.” [Doc. 43 at 5]. He further argues that an earlier filing of the motion “would not have changed the discovery process and would not have altered the issues at summary judgment.” [Id.].

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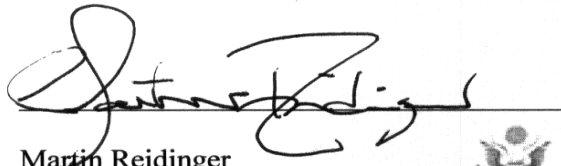
<sup>1</sup> The Plaintiff offers no excuse for the untimeliness of the Motion to Compel Production of Medical Records by Rutherford Pediatrics.

The Plaintiff has not demonstrated good cause for his untimely filing. The Plaintiff's motion indicates that the Plaintiff received the Defendants' objections to his discovery requests on July 12, 2018 (Marston) and on August 23, 2018 (Archer). [Doc. 42 at 2 ¶ 4]. Similarly, the Plaintiff received objections to the subpoena issued to Rutherford Pediatrics on August 15, 2018, well in advance of the discovery deadline. [Doc. 44 at 3 ¶ 8]. Thus, the Plaintiff had ample opportunity to file these motions to compel prior to the deadline for doing so as set forth in the Case Management Order. The fact that an earlier filing would not have altered the discovery process or the briefing of summary judgment issues is irrelevant. One of the primary reasons for the Court's rule regarding the filing of motions to compel is that allowing motions to compel to be filed after the closing of the discovery period does not provide this Court with sufficient time to rule on the motions prior to addressing dispositive motions. Here, the Defendants have already filed their dispositive motion, and briefing is underway. The Plaintiff has not demonstrated any good reason for the delay in the filing of the motions to compel, and the Court finds that allowing such dilatory motions would only impede the Court's resolution of the dispositive motion now pending. Accordingly, the Plaintiff's motions to compel shall be denied as untimely.

**IT IS, THEREFORE, ORDERED** that the Plaintiff's Motion to Compel Defendants Marston and Archer [Doc. 42] and the Plaintiff's Motion to Compel Production of Medical Records by Rutherford Pediatrics [Doc. 44] are **DENIED**.

**IT IS SO ORDERED.**

Signed: October 3, 2018

  
Martin Reidinger  
United States District Judge

